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In The Supreme Court of the United States

OCTOBER TERM, 1942

No. 172

MINNIE REESE RICHARDSON WRAGG,
Petitioner,

v.

FEDERAL LAND BANK OF NEW ORLEANS

BRIEF OF PETITIONER ON SUBMISSION ON MERITS

WALTER J. KNABE, *and*
JACK CRENSHAW, *Attorneys for Petitioner.*

SUBJECT INDEX

	Page
Opinions	1
Jurisdiction	1
Statement of the Case	2
Rulings of the Court Below	5
Specifications of Error	6
Summary of the Argument	7
Argument	8
Appendix	15

INDEX OF CASES

	Page
John Hancock Mutual Life Insurance Company v. Bartels, 308 U. S. 180	4, 8, 9, 10, 11, 12
Wayne United Gas Company v. Owens-Illinois Glass Company, 300 U. S. 131, 81 L. ed. 557	7
Wright v. Logan, ____ S. Ct. ____, 86 L. ed. Advance Sheets, (Oct. Term 1941, No. 229)	7, 8, 11, 12
Wright v. Union Central Insurance Company, 211 U. S. 273, 85 L. ed. 184, 61 S. Ct. 196, 44 Am. Bankruptcy Rep. (N.S.) 280	8

STATUTES CITED

	Page
Bankruptcy Act, Section 2 (11 U.S.C.A. Sec. 11 (a))	7
Bankruptcy Act, Section 75, Subsection (n)	7, 11, 12
Code of Alabama of 1923, Section 10140	7, 9, 11
Bankruptcy Act, Section 75, Subsection (s)	8, 9, 10, 13
Bankruptcy Act, Section 2(8) (11 U.S.C.A., Section 11(8))	10

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OPINIONS

Opinion of the District Court for the Northern Division of the Middle District of Alabama, written by Judge Murphree, sitting specially, was filed August 6, 1940, and appears at pages 41-47 of the record. It is reported in 34 Fed. Supplement 874. Opinion of the Circuit Court of Appeals for the Fifth Circuit written by Judge Holmes was filed on February 25, 1942, and is reported in 125 Fed. (2d) 1008.

JURISDICTION

The jurisdiction of this Court is invoked under Section 240 of the Judicial Code, as amended (U. S. C. A. Title 28, Sec. 347). The judgment of the Circuit Court of Appeals was entered February 25, 1942. Petition for rehearing was denied March 24, 1942. Writ of certiorari was granted by this Court on October 12, 1942.

STATEMENT OF THE CASE

In October, 1937, Minnie Reese Richardson Wragg filed in the District Court for the Middle District of Alabama her farm-debtor's petition for relief under Section 75 of the Bankruptcy Act (R. p. 4). The District Judge approved the same as having been properly filed (R. p. 11), and duly referred the same to a Conciliation Commissioner. On hearing before the Conciliation Commissioner petitioner filed her offer of composition and extension, which was accepted by all of the unsecured creditors, which represented a majority in number and amount of all claims, both secured and unsecured. (R. p. 14).

The Federal Land Bank of New Orleans held a secured claim against the farmer-debtor, represented by a mortgage upon certain real estate (R. p. 8, p. 15). Although this mortgage, executed in 1934 is referred to as a purchase money mortgage (R. p. 30), it appears that petitioner had some previous connection with the property, since she received credit on the mortgage for rents for 1933, the year preceding the mortgage. This secured creditor rejected the offer of proposed terms of composition and extension. The Conciliation Commissioner reported that the proposal of the farm-debtor did not include an equitable and feasible method of liquidating the claim of the secured creditor and of her financial rehabilitation (R. p. 16). Upon such report being set down for hearing before the District Judge, the Federal Land Bank of New Orleans objected to the confirmation of the extension proposal on the ground that said proposal was not a fair, equitable and feasible method of liquidation of their secured debt, nor an equitable and feasible method of financial rehabilitation for the debtor. The District Court sustained these objections to the confirmation of the proposal.

The farm-debtor then moved for leave to amend and pray adjudication as a bankrupt under Subsection (s) of Section 75 of the Bankruptcy Law. The District Judge refused to permit her to so amend her petition in order to obtain the benefits of Subsection (s) of Section 75 of the Bankruptcy Law (R. p. 19), but granted fifteen days in which she might become a voluntary bankrupt under the General Bankruptcy Law (R. p. 19). Petitioner did not elect to become a voluntary bankrupt under the General Bankruptcy Law, and on January 19, 1938, her proceedings were dismissed by the District Court. She attempted to appeal to the Circuit Court of Appeals for the Fifth Circuit assigning as error the denial to her of the right to amend her petition in order to obtain the benefits of Subsection (s) of Section 75 of the Bankruptcy Law (R. p. 22). This appeal was taken in forma pauperis, but the District Court certified that the appeal was not taken in good faith, and leave to proceed in forma pauperis was denied (95 F. (2d) 252). Petition for certiorari was likewise denied by this Court (305 U. S. 596). The Federal Land Bank thereupon completed foreclosure proceedings. The property was offered for sale by Special Master on March 12, 1938. The Federal Land Bank bid the sum of Two Thousand, Five Hundred Dollars ($2,500.00) (R. p. 28). The District Court refused to confirm this sale on the ground that said bid was inadequate, but the Federal Land Bank increasing its bid to the sum of Four Thousand, Five Hundred Dollars ($4,500.00), the District Court confirmed the foreclosure sale on April 21, 1938 (R. p. 33-35).

On April 8, 1939 on S. P. Storrs, a third party, offered to purchase from the Federal Land Bank the property of petitioner which had been purchased by the Land Bank at the foreclosure sale (R. p. 35). This offer recited an agreement to pay One Hundred Dollars ($100.00) cash, One Hundred Dollars ($100.00) on January 1, 1940, 1939

rents being reserved to the seller. This offer expressly stated the understanding of the proposed purchaser (R. p. 39) that the "sale will be made subject to the statutory right of redemption following foreclosure, if any exists."

At that time there was in effect a statute of Alabama which provided for right of redemption by the mortgagee within two years after foreclosure sale. Two years from the date of confirmation of the sale expired on April 21, 1940. On December 11, 1939, the Supreme Court of the United States rendered its decision in the case of *John Hancock Mutual Insurance Company v. Bartels*, 308 U. S. 180, holding that the fact that there was no reasonable probability of financial rehabilitation did not authorize the dismissal of proceedings by a farm-debtor seeking the benefits of Subsection (s) of Section 75 of the Bankruptcy Act. On March 11 1940, prior to the expiration of her statutory right of redemption, and shortly after the Bartels decision became known to her counsel, petitioner filed a petition in the District Court for the Middle District of Alabama (R. pp. 24, 25). This petition was filed in the alternative. In its first aspect it asked that the proceedings under Section 75 of the Act be reinstated and reopened and the relief under the Supervised Debt Extension Provisions authorized by said Section be granted to her. In its second aspect she sought to refile the farmer-debtor's proceedings. The Federal Land Bank filed answer and objection to the granting of the petition in so far as it sought to reopen or reinstate the farmer-debtor proceedings (R. pp. 25, 32), setting up the previous proceedings and averring the contract or agreement to sell to S. P. Storrs. The petition for reinstatement, or in the alternative to refile the proceedings, was dismissed by the District Court (R. pp. 41-48), and petitioner appealed to the Circuit Court of Appeals for the Fifth Circuit. The Circuit Court of Appeals rendered its decision and judgment on February 25, 1942, affirming the judgment of

the District Court, and application for rehearing properly filed by the petitioner was denied by the Circuit Court of Appeals on March 24 1942.

RULINGS OF THE COURT BELOW

The District Court in dismissing petitioner's application for reinstatement of her proceedings, rendered an opinion (34 Fed. Supp. 374) holding that the petition was not seasonably and diligently filed; that intervening rights had vested which it would be inequitable and unjust to disturb.

The Circuit Court of Appeals for the Fifth Circuit affirmed the judgment of the court below, but assigned different reasons therefor. The Circuit Court of Appeals in its opinion held:

> "Conceding without deciding that the petition was filed in due time and that no intervening rights had become vested, these circumstances alone do not entitle the appellant to the relief sought. Rather, they are conditions precedent to the power of the court to exercise its discretion upon the petition. Unless such facts affirmatively appear, it is the duty of the court forthwith to dismiss the petition. If, on the other hand, these conditions are met, the disposition to be made of the petition then lies within the sound discretion of the bankruptcy court. The court below entertained jurisdiction of the petition, considered it fully, and dismissed it. On this appeal it is incumbent upon the appellant to show an abuse of discretion by the court below. She has not met this burden.
>
> "The petition for the reinstatement was filed one day prior to the expiration of the statutory period for redemption. At that time appellant had been privileged to retain possession of her property for five years without making any payment on the mort-

gage and had been out of possession for approximately a year. Her petition did not allege that her financial condition had undergone any change, or that a further stay of proceedings would be likely to result in her financial rehabilitation. The third party purchased the land having good reason to believe that the bankruptcy proceedings brought by appellant had been ended by final decree. He had the right to expect, in the absence of his own fault, to use and enjoy the property purchased without molestation unless, as provided by Alabama law, the former owner exercised her right of redemption within two years and tendered to him the purchase price of the property with interest, costs, and the reasonable value of improvements."

SPECIFICATIONS OF ERROR

1. The District Court erred in not reopening and reinstating the farmer-debtor's proceedings so as to give to petitioner the relief to which she was entitled under Section 75 of the Bankruptcy Act. Petition therefor was promptly filed, and the rights of no innocent third party had intervened.

2. The District Court erred in dismissing petition to refile farm-debtor's petition.

3. The Circuit Court of Appeals for the Fifth Circuit erred in holding that a farm-debtor whose original proceedings were dismissed by the District Court under an erroneous construction of the applicable law, who filed petition for reinstatement or for the right to refile such proceedings before intervening rights had become vested, should be denied such reinstatement or the right to refile her proceedings and thereby perpetuate the original error in dismissing her original proceedings.

SUMMARY OF THE ARGUMENT

I

The Bankruptcy Court should reopen and reinstate cases closed improvidently or before a full administration thereof where application is promptly filed and no intervening rights of innocent parties have vested.

Wayne United Gas Company v. Owens-Illinois Glass Company, 300 U. S. 131, 81 L. ed. 557;
Bankruptcy Act, Section 2 (11 U. S. C. A. Sec. 11(a)).

(a) Petition filed within three months after Supreme Court of the United States rendered its decision as to proper construction of the statute was promptly filed.

(b) The unexpired statutory right of redemption is property or an interest in property which can be protected under Section 75 of the Bankruptcy Law and which should be administered under those provisions.

Bankruptcy Act, Section 75, Subsection (n);
Wright v. Logan, . . . Sup. Ct., . . . 86 L. ed. Advance Sheets 443, (Oct. Term 1941, No. 229).

(c) A third party holding a contract of sale subject to right of redemption can secure no vested rights which can deprive the farm-debtor of either the statutory right of redemption or the right to have the period of redemption extended for the period necessary for the purpose of carrying out the provisions of Section 76(n) of the Bankruptcy Act.

Wright v. Logan, supra;
Bankruptcy Act, Sec. 75, Subsection (n);
Code of Alabama of 1923, Sec. 10140.

PROPOSITION II

While the right of the Bankruptcy Court to reopen a case improvidently closed is a matter of discretion of the court, such discretion is abused by dismissal of a petition to reopen bankruptcy case which shows the plain denial to the farm-debtor of rights guaranteed to her by statute.

(a) Farmers cannot be deprived of the benefits of the Act because the court may believe that they have received the equivalent of what it prescribes.

Wright v. Logan, supra.

(b) Farmer's right to an adjudication under Section 75(s) of the Bankruptcy Act is not conditioned on a further stay of proceedings being likely to result in financial rehabilitation.

John Hancock Mutual Insurance Co. v. Bartels, 308 U. S. 180, 84 L. ed. 176, 60 S. Ct. 221, 41 Am. Bankruptcy Rep. (N. S.) 296;

Wright v. Union Central Insurance Company, 211 U. S. 278, 85 L. ed. 184, 61 S. Ct. 196, 44 Am. Bankruptcy Rep. (N. S.) 280.

ARGUMENT

In 1938, the petitioner's right to belief under the plain provisions of Subsection (s) of Section 75 of the Bankruptcy Act was denied by the District Court, apparently on the basis of the Federal Land Bank's objection that the proposal theretofore filed did not contain an equitable and feasible method for the financial rehabilitation of the farm-debtor. Her attempt to have this error corrected at that time was defeated by her inability to pay court costs and the denial to her to proceed in forma pauperis. Thereafter, in December, 1939, this Court decided the

case of *John Hancock Mutual Insurance Company v. Bartels.* This case settled any doubts as to the proper construction of Section 75(s) of the Bankruptcy Act. It was there stated that:

> "The subsections of Section 75 which regulate the procedure in relation to the effort of a farmer-debtor to obtain a composition or extension contain no provision for a dismissal because of the absence of a reasonable probability of the financial rehabilitation of the debtor."

On March 11, 1940, petitioner by appropriate proceedings sought the relief to which she was entitled and which had been erroneously denied to her by the District Court.

At that time there was in effect a statute of Alabama which provided (Code of Alabama of 1928, Sec. 10140):

> "Where real estate, or any interest therein, is sold under execution, or by virtue of any decree in the circuit court, or under any deed of trust, or power of sale in a mortgage, the same may be redeemed by the debtor, junior mortgagee, vendee of the debtor, or assignee of the equity or statutory right of redemption, wife, widow, child, heir at law, devisee, or any vendee or assignee of the right of redemption under this Code, from the purchaser, or his vendee, within two years thereafter in manner following."

This right of redemption was outstanding in the petitioner.

The Special Judge sitting in the District Court dismissed her petition for reopening and reinstatement, or in the alternative to refile the farm-debtor proceedings. The opinion written by the District Judge recognized the right of courts of bankruptcy to reopen and reinstate cases closed before full administration thereof, but apparently held that the petition was not properly filed and that rights had intervened which it would be inequitable to disturb. The Circuit Court of Appeals in affirming this decision,

concedes that the petition was filed in due time before the rights of innocent third parties had vested.

We submit that the decision of the District Court was plainly an abuse of discretion. The District Court had denied to petitioner the plain statutory right to a stay of proceedings under Subsection (s) of Section 75 of the Bankruptcy Act. There were assets which had not been fully administered. Section 2 (8) of the Bankruptcy Act (11 U. S. C. A., Sec. 11(8)) specifically vests in courts of bankruptcy power to "close estates whenever it appears that they have been fully administered, by approving the final accounts and discharging the trustees, and reopen them whenever it appears that they were closed before being fully administered."

While the motion to reopen under this section is addressed to the sound discretion of the Judge of the bankruptcy court, the action of the District Court may, and we submit should, be reversed where a plain abuse of discretion is shown. No more plain abuse of discretion could be shown than the denial of a statutory right where the record shows that the petition to reopen was seasonably and diligently filed and no rights had intervened which it would be inequitable to disturb.

That the record shows the petition was seasonably filed is, we submit, shown where it was filed within three months after the decision of this Court in the *Bartels Case* definitely established the farm-debtor's rights.

The Circuit Court of Appeals conceded this and likewise conceded that the rights of no innocent third party had intervened. This is likewise plainly shown by the record, for the third party's rights were expressly conditioned upon the outstanding right of redemption under the statute of Alabama. Not only did the third party make the small down payment of Two Hundred Dollars ($200.00) with knowledge of this outstanding right of redemption, but the third party took with knowledge that the

statutory right of redemption might be extended by appropriate proceedings under Section 75 of the Bankruptcy Act. To permit this right of redemption to be extinguished by a third party, would be directly contrary to Section 10140 of the Code of Alabama of 1923 and to Section 75(n) of the Bankruptcy Act and to the decision of this Court in *Wright v. Logan*.

The Circuit Court of Appeals in deciding that an abuse of discretion by the court below was not shown, was apparently impelled to this conclusion by three statements:

(1) That the petition was filed one day prior to the expiration of the statutory right of redemption and at that time appellant had been privileged to retain possession of her property for five years;

(2) That the petition did not allege that a further stay of proceedings would be likely to result in financial rehabilitation;

(3) That the third party had the right to expect to continue to enjoy the property purchased without molestation unless there was a redemption under the Alabama statute.

We respectfully submit that these three statements are directly contrary to both the spirit and the letter of Section 75 of the Bankruptcy Law and to the decisions of this Court in both *Hancock Mutual Life Insurance Company v. Bartels*, and *Wright v. Logan*. We will dispose of these three bases of the opinion of the Circuit Court of Appeals by the following references to the decisions of this Court:

(1) "Farmers cannot be deprived of the benefits of the Act because the court may believe that they have received the equivalent of what it prescribes" (Per Black, Justice, in *Wright v. Logan*.).

(2) "The subsections of Section 75 which regulate the procedure in relation to the efforts of a farmer-debtor to obtain a composition or extension contain no provision of

dismissal because of the absence of a reasonable probability of the financial rehabilitation of the debtor" (Per Hughes, Chief Justice, in *John Hancock Mutual Life Insurance Company v. Bartels*, 308 U. S. 180, 184; 84 L. ed. 176, 179).

(3) "It is nevertheless appropriate to point out at this time that whatever right of redemption the petitioners had when they first applied for adjudication under 75 continued to be a part of their assets subject to administration by the bankruptcy court. For 75(n) subjects all of the farmer-debtor's assets, specifically including rights of redemption, to the jurisdiction of the bankruptcy court and provides that 'the period of redemption shall be extended * * * for the period necessary for the purpose of carrying out the provisions of this section" (Per Black, Justice, in *Wright v. Logan*).

There can be no doubt that if the farmer-debtor had on March 11, 1940, filed her original petition seeking the benefits of Section 75 of the Bankruptcy Act, the mere filing of such petition would have cut off any rights of the third party and she would then be plainly entitled to the full measure of the relief afforded by Congress. She had already sought those benefits and had been denied them by an erroneous ruling of the District Judge. On March 11, 1940, she sought the reopening or reinstatement of her original proceedings which had been improvidently closed and while there were still assets to be administered. Out of an excess of caution and in order to avoid any doubt, in the alternative she prayed that if she was mistaken in the form of relief and if she should refile instead of asking for reinstatement and opening of her former case, that the schedules then on file be taken as part of the petition for relief under Section 75, and offered to pay such fee or fees as might be required. Neither the District Judge nor the Circuit Court of Appeals has in any way referred to this

aspect of the petition or given any reason for denying to her the right to refile the proceedings and thus obtain the relief afforded to her by Congress.

CONCLUSION

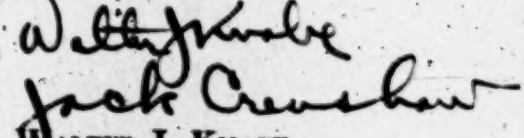
Congress intended farm debtors to have the benefits of Section 75 (s) of the Bankruptcy Act and the Supreme Court has construed the Act in favor of such debtors. Petitioner did everything in her power to secure the benefits Congress and the Supreme Court intended her to have. The Federal Land Bank is the party which caused the Court to go astray in the first instance and thereby prevented petitioner from securing those rights. Promptly upon the Supreme Court decision construing the Act as entitling petitioner to those benefits, she came before the Court of Bankruptcy, as a court of equity, with steps designed to correct the wrong and to secure the benefits which Congress intended her to have. The Federal Land Bank, we submit, is in no position to complain if petitioner is now given those benefits she was erroneously prevented from having in 1938.

If the case is reversed The Federal Land Bank loses nothing to which it was entitled originally. If the case is affirmed the Bank thereby secures advantage of the mistake for which it was responsible. The only third party is not here before the Court, for his rights were expressly subject to petitioner's right of redemption which can and should be protected under the Act.

The Bank is, therefore, in the position of asking this Court to perpetuate the error for which it was originally responsible, and forever deny to petitioner the rights to which she was entitled during the entire time. We submit that in equity petitioner should now be given the benefits which were erroneously denied to her at the instance of

the Bank and the cause reversed and the proceedings reinstated for that purpose.

Respectfully submitted,



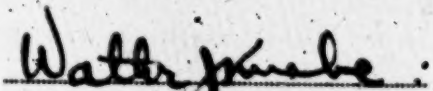
WALTER J. KNABE,
Bell Building
Montgomery, Alabama.

JACK CRENSHAW,
First National Bank Building,
Montgomery, Alabama.

Attorneys for Petitioner.

State of Alabama,
Montgomery County.

I, Walter J. Knabe, hereby certify that I have on this the 4th day of November, 1942, served a copy of the foregoing brief and argument upon Honorable B. P. Crum, Montgomery, Alabama, of counsel for the Federal Land Bank of New Orleans.



Walter J. Knabe.

APPENDIX.

Section No. 75 of the Bankruptcy Act:

(n) The filing of a petition or answer with the clerk of court, or leaving it with the conciliation commissioner for the purpose of forwarding same to the clerk of court, praying for relief under this section, shall immediately subject the farmer and all his property, wherever located, for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, including, among others, contracts for purchase, contracts for deed, or conditional sales contracts, the right or the equity of redemption where the period of redemption has not or had not expired, or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition.

In all cases where, at the time of filing the petition, the period of redemption has not or had not expired, or where the right under a deed of trust has not or had not become absolute, or where the sale has not or had not been confirmed, or where deed had not been delivered, the period of redemption shall be extended or the confirmation of sale withheld for the period necessary for the purpose carrying out the provisions of this section. The words "period of redemption" wherever they occur in this section shall include any State moratorium, whether established by legislative enactment or executive proclamation, or where the period of redemption has been extended by a judicial decree. In proceedings under this section, except as otherwise provided herein, the jurisdiction and powers of the courts, the title, powers, and duties of its officers, the duties of the farmer, and the rights and liabilities of

creditors, and of all persons with respect to the property of the farmer and the jurisdiction of the appellate courts, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the farmer's petition, asking to be adjudged a bankrupt, was filed with the clerk of court or left with the conciliation commissioner for the purpose of forwarding same to the clerk of court.

* * * * * * * *

(s) Any farmer failing to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a compostion and/or extension proposal, or if he feels aggrieved by the compostion and/or extension, may amend his petition or answer, asking to be adjudged a bankrupt. Such farmer may, at the same time, or at the time of the first hearing, petition the court that all of his property, wherever located, whether pledged, encumbered, or unencumbered, be appraised, and that his unencumbered exemptions, and unencumbered interest or equity in his exemptions, as prescribed by State law, be set aside to him, and that he be allowed to retain possession, under the supervision and control of the court, of any part or parcel or all of the remainder of his property, including his encumbered exemptions, under the terms and conditions set forth in this section. Upon such a request being made, the referee, under the jurisdiction of the court, shall designate and appoint appraisers, as provided for in this title. Such appraisers shall appraise all of the property of the debtor, wherever located, at its then fair and reasonable market value. The appraisals shall be made in all other respects with rights of objections, exceptions, and appeals, in accordance with this title: PROVIDED, That in proceedings under this section, either party may

file objections, exceptions, and take appeals within four months from the date that the referee approves the appraisal.

* * * * * * * *

(5) This title shall be held to apply to all existing cases now pending in any Federal Court, under this Section, as well as to future cases. All cases under this Section that have been dismissed by any conciliation commissioner, referee, or Federal Court because such Court erroneously assumed or held that Subsection (s) of this section was unconstitutional, shall be promptly reinstated, without any additional filing fees or charges. Any farm debtor who has filed under the General Bankruptcy Act may take advantage of this section upon written request to the court; and a previous discharge of the debtor under any other section of this title shall not be grounds for denying him the benefits of this section.

(6) This title is hereby declared to be an emergency measure and if in the judgment of the court such emergency ceases to exist in its locality, then the court, in its discretion, may shorten the stay of proceedings herein provided for and proceed to liquidate the estate.